

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Brown Broadcasting System, Inc.)	File No. EB-03-AT-197
Owner of Antenna Structure located in)	NAL/Acct. No. 200432480001
Jefferson, Georgia)	FRN 0009 7708 84
Athens, Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 2005

Released: June 24, 2005

By the Acting Chief, Enforcement Bureau:

1. On April 16, 2004, the Enforcement Bureau issued a *Forfeiture Order*¹ in the amount of three thousand dollars (\$3,000) against Brown Broadcasting System, Inc. ("Brown Broadcasting"), owner of an antenna structure in Jefferson, Georgia, for failure to register its antenna structure, in willful and repeated violation of Section 17.4(a) of the Commission's Rules ("Rules").² The forfeiture was imposed on Brown Broadcasting after it failed to respond to the Bureau's *Notice of Apparent Liability* ("NAL").³ On May 17, 2004, Brown Broadcasting, by its attorney, filed a Petition for Reconsideration ("petition") requesting cancellation of the \$3,000 forfeiture amount based primarily on financial hardship. By this *Memorandum Opinion and Order* ("Order"), we deny Brown Broadcasting's petition.

2. In its petition, Brown Broadcasting does not dispute the violation, noting that the tower is now registered.⁴ Brown Broadcasting's sole argument is that the forfeiture should be cancelled "because it will impose a harsh burden on the licensee." Brown Broadcasting "urges the Bureau to disregard the strict indicia that it usually employs in these cases and view Brown Broadcasting as a small AM broadcaster in a small market whose limited resources make a \$3,000 forfeiture a significant obligation." In support, Brown Broadcasting submits federal income tax returns for the years 2001, 2002 and 2003 as required by Paragraph 11 of the *NAL*.

3. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act")⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture*

¹ *Brown Broadcasting System, Inc.*, 19 FCC Rcd 6896 (Enf. Bur. 2004).

² 47 C.F.R. § 17.4(a).

³ See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432480001 (Enf. Bur., Atlanta Office, released December 8, 2003). Brown Broadcasting does not dispute that it failed to respond to the *Notice of Apparent Liability*.

⁴ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994) (finding that a downward adjustment of a forfeiture was not warranted, where the violation was addressed *after* the *NAL* was issued).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

*Guidelines.*⁷ In examining Brown Broadcasting's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.⁸

4. The Commission has recognized "the concerns raised by small entities as to the burden and expense of documenting inability to pay a forfeiture by means of audited financial statements," and thus will consider "any documentation, not just audited statements" that serves as "probative, objective evidence" of their financial status.⁹ Such entities' reliance upon their small business status, alone, will not suffice;¹⁰ they still must substantiate their inability to pay claim with financial documentation.¹¹ As noted, the Commission previously has addressed the "small market" argument and rejected it. Accordingly, recognizing that the Commission has determined that, in general, gross revenues are the best indicator of a licensee's ability to pay an assessed forfeiture,¹² we look to the financial documentation submitted by Brown Broadcasting and, based on its gross revenues, conclude that a cancellation of the \$3,000 forfeiture amount is not warranted.¹³

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 405 of the Act¹⁴ and Section 1.106 of the Rules,¹⁵ Brown Broadcasting's petition for reconsideration **IS DENIED**.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2).

⁹ *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17107 ¶ 44 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ *See Forfeiture Policy Statement, supra*, at 17109 ¶¶ 51-52 (1997) (finding that the Commission's forfeiture policies and precedent is consistent with the requirements of Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996), because the agency considers, among other factors, inability to pay, good faith efforts, participation in alternative compliance programs, in assessing forfeitures).

¹¹ *See, e.g., Jerry Szoka*, 14 FCC Rcd 20147, 20150 ¶¶ 9-10 (1999); *Bay Broadcasting Corp.*, 15 FCC Rcd 13613, 13615-16 ¶¶ 8-9 (Enf. Bur. 2000).

¹² *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹³ *See Local Long Distance, Inc.*, 16 FCC Rcd 10016, 10025 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Alpha Ambulance, Inc.*, FCC 04-19, 2, n.15 (February 5, 2004), citing *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues).

¹⁴ 47 U.S.C. § 405.

¹⁵ 47 C.F.R. § 1.106.

¹⁶ 47 U.S.C. § 504(a).

transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

7. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Brown Broadcasting System, Inc., 1186 West Broad Street, Athens, Georgia, and to its counsel, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

¹⁷ See 47 C.F.R. § 1.1914.